

**BRIGHAM CITY APPEAL AUTHORITY
OCTOBER 10, 2007 – MEETING MINUTES**

PRESENT:	Don Peart Marilyn Peterson Jess Palmer	Board Member Board Member Alternate
ALSO PRESENT:	Jeff Leishman	Associate Planner
EXCUSED:	George Berkley Martha Shoun Jaye Poelman	Chairman Vice Chairman Alternate

AGENDA:

1. APPROVAL OF PAST MEETING MINUTES
2. APPLICATION #609 / NONCONFORMING CARPORT / 1017 BEECHER /
DEANN EBELING
3. REVIEW APPEAL AUTHORITY BYLAWS

Meeting convened at 5:37 p.m.

Motion: A motion was made by Jess Palmer to nominate Don Peart as acting Chairman for this meeting. The motion was seconded by Marilyn Peterson and passed unanimously.

APPROVAL OF PAST MEETING MINUTES

Mr. Peart suggested continuing the approval of the minutes until there is a full quorum.

Motion: A motion was made by Marilyn Peterson to table (continue) the approval of the minutes until more of the board members are present. The motion was seconded by Jess Palmer and passed unanimously.

APPLICATION #609 / NONCONFORMING CARPORT / 1017 BEECHER / DEANN EBELING

Mr. Peart explained the approval and appeal process to the applicant and informed her that she could elect to continue this review until more members of the Appeal Authority could be present thus increasing the odds of approval. If the application is denied, she has 30-days to file an appeal with the District Court.

Ms. Peterson explained that it was up to the applicant to prove that she has a valid need. Approval is not a matter of personal interpretation; it is a matter of whether or not things follow along with the letter of the law. The vote must be unanimous for approval as there are only three members present.

Ms. Ebeling inquired as to why she was not informed that there would not be a full quorum. Mr. Leishman replied that George Berkley, Appeal Authority Chairman, called him Monday evening, October 8, 2007 and said if there were not going to be three members present he would cut his vacation short and drive back from New Mexico to attend the meeting. Mr. Berkley also informed Mr. Leishman that Jaye Poelman, Appeal Authority Alternate, had a previous engagement and would not be attending this meeting either.

Ms. Ebeling asked if 'the letter of the law' referred to the law as it is today or as it was when her carport was built. Ms. Peterson commented that Ms. Ebeling is before the Appeal Authority because she believes

she has a reason that varies from the law and the Appeal Authority is here because she has a valid concern. Mr. Peart commented that the Appeal Authority exists because there are various preexisting circumstances that are brought before them for evaluation but the current code must be followed. The Appeal Authority does have the ability to evaluate the circumstances and make adjustments, within the parameters of the law, which they feel are in the best interest of Brigham City and the individuals involved. Ms. Ebeling stated she felt like she had a valid case but also felt at a disadvantage with not having a full quorum.

Ms. Ebeling relayed a little history of her family and property. After they purchased their home in 1957 they decided they needed a carport. When the curb and gutter was installed they had their driveway and carport put in; that was in about 1958 or 1959. About three years ago she talked to someone about turning her carport into a garage. This person told her that because of the grandfather law she could go ahead and do that. The carport is in dire need of repair. Ms. Ebeling stated that Mr. Leishman told her he could not find a building permit for her carport. All the people that worked on that carport are no longer here. Ms. Ebeling brought photos of her carport. She stated that for her own safety and that of others she feels she needs to get the carport fixed. She had the contractor go ahead with the work. They tore down the carport and took out the old cement driveway. The new carport will be exactly where the old carport was and will be for two cars, as was the old one. The old carport was constructed of metal. Ms. Ebeling stated that her insurance company told her that metal carports and awnings are uninsurable so her intent was to replace the broken down metal carport with one that is better and more permanent. Ms. Ebeling brought a petition signed by all her neighbors in support of her application.

Mr. Peart invited those who would like to comment on this issue to come forward.

Reed Burke came forward and stated that he would like to support Ms. Ebeling on this project. He is a member of the Mayor's Neighborhood Pride Council and they do what they can to help people in town to beautify their yards and surroundings. He stated that he thinks Ms. Ebeling is moving in the right direction. Her old carport was in need of repair and didn't look good. Mr. Burke said he talked to the contractor about her plans and he thinks it is a good idea. The majority of the homes along Beecher have a 2-car garage or a double carport. They have a nice neighborhood and they would like to keep it that way.

Wade Ebeling Jr., Ms. Ebeling's son, came forward and said that he wanted to validate her comments. He said he has had to prop-up her carport several winters in a row. He said he does not know what the law is but it is just common sense to replace the carport.

Chris Erickson, neighbor to the west, came forward and stated that he is in support of her application. He supported Mr. Burke's comments about the homes in the neighborhood having either a 2-car garage or a double car carport.

Ms. Ebeling stated that her neighbor to the east, Jacob Bishop, who would be the one feeling any impact of the carport, had signed her list of support. Mr. Leishman stated that he had a letter from Mr. Bishop. Mr. Peart read the letter so as to be on the record and in the minutes. The letter from Mr. Bishop is dated October 9, 2007 and reads as follows:

Mr. Leishman,

My name is Jacob Bishop. I am the property owner due east (1037 Beecher) of Ms. Ebeling at 1017 Beecher Ave. I am writing about the letter that I received last week about her application.

I would like to keep my future options open in regard to a possible addition to my own home where a 2-car garage would be added on the west side of my property. The distance from the property line would be approximately 8-feet to my future structure. However, with the construction of Ms. Ebeling's carport/garage, the distance between the two structures would be significantly less than the 18-feet needed between the buildings. Is there a problem with this?

I really have no issue with the construction of Ms. Ebeling's carport/garage unless it precludes me from future improvements on my side of the fence. Would it be possible to receive an official letter from the City stating that her new structure will not interfere with any potential plans that I may have as long as I am in accordance to the 8/10 foot rule?

I hope that I have understood the rules correctly as they have been explained to me and I thank you for your time and consideration. If you have any questions, please reach me at my cell phone. Thank you again.

Jacob Bishop

Mr. Peart asked Mr. Leishman what he found with the Code and what the problems are concerning the sideyard. Before answering Mr. Peart's question, Mr. Leishman stated that Mr. Bishop called him and he reassured Mr. Bishop that whatever happens, as proposed, on the Ebeling property will not impact him. As the Codes are written today, he could have his structure within 8-feet of the west property line; assuming he has 10-feet on the east. It is required to have an 8-foot minimum sideyard; the two opposite sideyards have to equal 18-feet.

Mr. Leishman reviewed a letter sent to Ms. Ebeling. In part of the letter to Ms. Ebeling, dated April 3, 2006, the first portion talks about the findings of fact and a little bit of history. In the conclusion it states:

The west property was acquired and a home was built in 1956. Two years later (1958) 2,160 sq. ft. was acquired. Sometime thereafter a metal attached carport was built on the east side of the home and extended twelve feet into your adjacent parcel. City building permit and Board of Adjustment records have been researched for the noted carport. Other than a permit issued September 26, 1977, to "Reroof Home" no other permits or approvals were located. It appears the carport was installed on the east part of the west parcel and on the west part of the east parcel without City approvals. Therefore, based on City and Court House records, the carport appears to be illegal nonconforming and may not be replaced with similar setbacks.

Mr. Leishman commented that at the beginning of the meeting Mr. Peart alluded to this as being a variance; this is not a variance, this is a determination of nonconformance. In the letter Mr. Leishman just reviewed, it was stated that the City's opinion is that the carport is illegal nonconforming. That is the basis of where he began. The next letter Mr. Leishman read is from Shaun Thornley, Box Elder County Deputy Treasurer, and dated October 1, 2007.

I was asked by Jeff Leishman if I could determine, using the assessor's records, the date that a carport was built on the home at 1017 E. Beecher Avenue. The original sketch of the building was drawn in 1973; it shows that the carport existed at that time. Further, our records indicate that the home was built in 1956. My best estimate, given limited information, is that the carport was built sometime between 1956 and 1973.

Mr. Leishman then read a letter from Alan Wright, Director Brigham City Light and Power, and dated October 3, 2007.

I was employed by Brigham City Corporation during the time frame that Floyd Anderson was also employed by Brigham City Corporation as a Building Official. During Mr. Anderson's employment it was common for Mr. Anderson to not require building permits for minor structures. Mr. Anderson's administration of the codes could possibly be interpreted as being liberal by today's standards. Therefore, it is very likely Mr. Anderson allowed the Ebeling carport to be constructed with little or no involvement by Brigham City.

Next, Mr. Leishman read his memorandum to the Appeal Authority; dated October 2, 2007.

DeAnn Ebeling is requesting approval to replace a carport that was constructed between 1956 and 1973 [See Box Elder County Deputy Treasurer memo]. Ms. Ebeling further stated in her memo that the carport was constructed after moving into the home in 1958 [See Ms. Ebeling memo]. The home to the east, as illustrated in the photograph, was constructed in 1959, per Court House records. Therefore, the carport was constructed between 1959 and 1973. Ms. Ebeling recalls that her husband was given permission to construct the carport by Floyd Anderson, Building Official, even though a building permit was not required of them.

The Revised Ordinances Brigham City, Utah 1957 has been reviewed concerning this matter. This ordinance likely would have been the building standard in place when the carport was constructed.

It can be shown that this ordinance would have required a ten (10) ft. east sideyard for the carport rather than the three (3) ft. as currently constructed, but testimony has been provided by Ms. Ebeling and Alan Wright, Director Brigham Light & Power, that ordinances were not always interpreted by Mr. Floyd Anderson, Building Official, as we might interpret the ordinances today. Therefore, pursuant to the evidence presented, Ms. Ebeling is requesting the Land Use Authority identify her carport as "Legal Nonconforming" rather than "Illegal Nonconforming" as stated in the Leishman memo dated April 3, 2006. This legal nonconforming status would then allow the structure to be replaced with a structurally sound carport that does not need to be braced during the winter months.

The next letter Mr. Leishman read is from the City Attorney, Greg Nielsen, who has reviewed all the documents that have been mentioned here. That letter, dated October 3, 2007, is addressed to Mr. Leishman and reads:

I have reviewed the information you provided me regarding the zoning/land use determination for the east carport at the above-referenced property. I have also reviewed the City Ordinances in effect at the time the carport was constructed. Based upon what I reviewed, my opinion is that the carport appears to be an illegal nonconforming pursuant to City Ordinance. However, it appears that Floyd Anderson, Building Official, while acting within the scope of his employment gave permission to the Ebelings to construct the carport and did not require them to get a building permit. Accordingly, I concur with your position to identify the carport as "legal nonconforming" so that the carport can be replaced with a structurally sound carport or garage.

Mr. Leishman commented that the City Attorney is suggesting to the Appeal Authority, based upon his understanding of the law and the Building Official, acting within the scope of his employment, to identify the carport as "legal nonconforming".

Ms. Peterson asked Mr. Leishman, based upon the indication that they make a determination of nonconformance, if that means they should ignore the five steps of a variance appeal. Mr. Leishman replied that yes they would because this is not a variance appeal; those are not values to be judged in this case. This is strictly an issue of nonconformance of which there is no doubt. The City Attorney has agreed with the structure being "illegal nonconforming" but based on the pattern of how the Building Official, at the time the carport was constructed, was conducting business, as a City Official, needs to be taken into consideration. Business 50-years-ago was not conducted the same way as it is today.

Mr. Peart clarified for Ms. Peterson that from the evidence that has been presented, this can be recognized as "legal nonconforming" and from the way business was conducted 50-years-ago, as recommended by the City Attorney. Mr. Leishman commented that a "legal nonconforming" structure can be replaced with a structure exactly like the previous structure, which becomes a grandfathered right.

Ms. Peterson asked if they would run into any problems since the previous structure has already been removed. Mr. Leishman replied that they would not because this was discussed prior to it being removed. Noel Cochran, Ms. Ebeling's contractor, invited Mr. Leishman to the property and they measured the distances. Mr. Leishman documented what was existing and took pictures so it is not an issue that the structure is gone. The new structure has to be the same footprint of the previous one but does not have to be made out of the same materials.

Motion: A motion was made by Jess Palmer to grant the request to move it to a legal nonconforming lot on the grounds that a City employee, acting under the cover of his authority, had given permission to erect the original carport and now that it has become unstable it needs to be corrected to make it safe. The City Attorney has reviewed the case and agreed that because of the way things were done 50-years-ago and the way they are done today, it is his recommendation that it be granted and it would be legal for the Appeal Authority to do that. The motion was seconded by Marilyn Peterson and passed unanimously.

Mr. Peart commented that anyone who wanted to appeal this decision could do so to the District Court within the next 30-days. Mr. Leishman commented that they have a structure that has been and will be on two pieces of property. There are means within City government to join the two pieces together and Mr. Leishman suggested to Ms. Ebeling that the two pieces be combined into one piece. The Community Development Department has an application if Ms. Ebeling so chooses to do that. Mr. Leishman said he would do what he could to have the fee associated with that action waived. Combining the two pieces would help to eliminate future problems.

REVIEW APPEAL AUTHORITY BYLAWS

Mr. Leishman explained that he took the comments from the January 2007 meeting and made changes to the bylaws. He passed out copies to the members and explained that he did not want any action taken on the redraft of the bylaws, at this time, but asked that they be tabled (continued) for now. Mr. Peart suggested that they review these in order to be prepared for the next meeting to make any comments or changes.

Motion: A motion was made by Jess Palmer to table (continue) the review of the Appeal Authority Bylaws until the next meeting. The motion was seconded by Marilyn Peterson and passed unanimously.

Ms. Peterson suggested they hold the November meeting to review the bylaws. Mr. Peart also suggested recommending to the Chairman and Vice Chairman that they convene in November to discuss the bylaws.

Mr. Leishman explained that the City Zoning Ordinance has been rewritten. The Appeal Authority now has four powers: appeals, special exceptions, variances and nonconforming use to hear and make determinations regarding the existence, expansion or modification of nonconforming uses. This evenings application went under provision four; nonconforming use. Ms. Peterson asked if they could get clarification and definition on those provisions at the next meeting.

Motion: A motion was made by Marilyn Peterson to adjourn. The motion was seconded by Jess Palmer and passed unanimously.

The meeting adjourned at 6:30 p.m.

This certifies that the minutes of October 10, 2007 are a true and correct copy as approved by the Appeal Authority on November 14, 2007.

Signed: _____
Jeffery R Leishman - Secretary